

THE
SAVILIAN PROFESSOURS
CASE
STATED.

TOGETHER

With the severall reasons urged against his capacity of standing for the publique Office of Antiquary in the University of *Oxford*, which are enlarged and vindicated against the exceptions of Dr. *John Wallis* (heretofore of *Cambridge*) Savilian Professour of Geometry in the said University, wherein he hath been elected (*as it is said*) and since admitted to the Office of Antiquary. The whole proceſſe is faithfully penned, and submitted to the judgement of all conscientious men, and in particular to those Honourable personages who are Protectors of Sr. Henry Saviles Statutes. See, *Acta: Oxon: at Hen: Stubbe.*

By Henry Stubbe M. A. and Student in Ch. Ch.

Heb. 10. 17. For a Testament is of force after men are dead.

Zachar. 5. 1, 2, 3, 4. Then I turned, and lift up mine eyes, and looked, and behold a flying rowl.

And he said unto me, What seeſt thou? and I answered, I see a flying rowl, the length thereof is twenty cubits, and the breadth thereof tencubits.

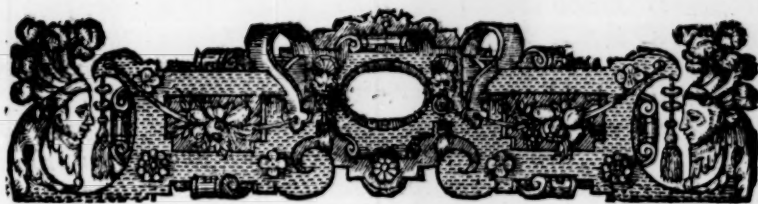
Then said he unto me, This is the curse that goeth over the face of the whole earth—every one that sweareth shall be cut off as on that side, according to it.

I will bring it forth, saith the Lord of hosts, and it shall enter into the house of him that sweareth falsely by my Name: and it shall remain in the midst of his house and shall consume it, with the timber thereof and the stones thereof.

L O N D O N,

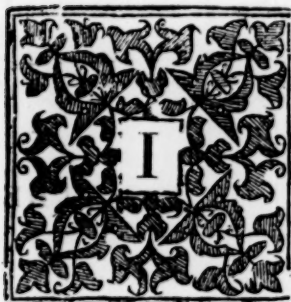
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Richard Davis in Oxon. 1658.

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To the Right Honourable the Lords Pro-
tectors of S^r. *HENRY SAVILE*
Statutes.

Right Honourable,



make not any recourse to your favour, but justice: nor is it my own case which I sollicite, but the concerns of the dead. Sr. HENRY SAVILE hath recommended his Statutes to your special protection; it is in their behalf I plead. 'The 'University and each particular 'member thereof is sworn invio- 'lably to observe them, and to cause others to do the like. Upon this inducement I cast my self at your Lordships feet, and presume to put into your hands a Paper, which any ordinary tenderness over the Will of our deceased Benefactour might have permitted to come forth at Oxford: but neither the importance of the businesse, nor my entreaties could prevail in such a request; greater liberty being suffered in him who would overthrow, then in him who would maintain those constitutions. It is time then, My Lords, that you be consulted; to your considera-

THE EPISTLE.

Stat. Savil.
Señ. 6.

tions I submit the case: After such a failour here, the World expects to see how you will make good the hopes Sr. HENRY SAVILE placed in your worth for the perpetuall upholding of his Statutes and Decrees: I hope you will rather go about to rectifie then continue miscarriages; and fetch examples from your own sincerity in other cases, rather then from the corruptions of them whom God hath blasted upon the face of the earth. That you would put on these resolutions is the desire of

your Lordships

Ch. Ch. in Oxon.

most humble servant

March 10. 1657.

HENRY STUBBE.

THE



The SAVILIAN Professors case stated,

Though after *alien* disputes be unreasonable, and serve rather to upbraid then satisfy and convince the mistaken: yet since all endeavours to violate the wills of the dead are of publick concernment, and interestle particularly so together with our posterity, who as poor elemosynaries owe our subsistence to the charity of well-disposed testators, I hope, in this juncture of affairs, all persons of ingenuity will rather calmly debate, then censure my present thoughts, and laying their hands upon their hearts enquire, what hath been the sense of men of uprightness and integrity as to this late attempt, and how valid those reasons were which have been exhibited to prove the consistency of the place of Custos Archivorum with that of a Savilian Professor.

Sr. HENRY SAVILE in his founding of two Lectures in Oxon: seems to have made it his design, that they should be supplied with an ample Salary, so as they should not need further augmentation, nor be put to seek out other auxiliary means of livelyhood, which might give them cause of diversion from those studies the advancement whereof he intended, and which (without any additional cares) are sufficient to take up the whole man. To this end he ordained them singly of yearly revenue in land [to be improved upon occasion 'Sect. 8. Neque enim rationabile videtur, ut, cum pretia rerum venalium quotidie crescant, non Stat. Savil. etiam crescant (quod commodè fieri poterit) pretia prædiorum. (i. e.) 'It doth not seem reasonable, that since all things that are bought and sold 'do daily rise in their prices, the rents of tenants should be alwayes at one 'stand, if they may conveniently be bettered.] the sum of 160 pounds Sterling: with some thoughts of a possibility of adding more, if God should spare him his life. [*ibid.* 'Si quæ alia, futuris temporibus, ex mea liberalitate ac- 'cesserint, quod non despero futurum, si Deus mihi vitam annuerit.] How much it was wherewith he intended to endow them, I know not: but it is manifest, that some years after in his last will, he thus disposed of his benevolence as to those professorships ['Porò quoad 40. l. annuas post mortem meam 'nomine Universitatis perquirendas hunc in modum statuo & decerno, Stat. Savil. ' &c.] of 40. l. per annum: to be purchased in the name of the University, he so ad Sect. 8.

ordered it that 20. *l.* per annum should be allowed to his servant *Rand. Palin*, in lieu of his faithful discharge of the office of Bailly to the said Professors about their lands; and of the other 20. *l.* per annum 12. *l.* went to the Vice-chancellor, Proctors, Bedels of Arts, and him that shall toll the Bell to Lectures, for their fees: and 8 *l.* to the Mathematick Chest, after the said *Palin's* decease the 20. *l.* per annum which he had, was to revert to the two Professors [*ad refarciendum aliquatenus decrementum redditus de Purston.*] To help to make up the rents of their lands at *Purston*, which before his death *Sr. HENRY SAVILE* found to be less than he had reckoned upon. We see then that after he had endowed his Lectures, notwithstanding the hopes he had raised of augmenting their stipends, yet at his death he did not make any further provision for them then hath been recounted: no not although he knew the incomes of their places to be somewhat less than he had registred in their fundamental constitution: he takes a care of *Rand. Palin*, he was not unmindful of the Professours, yet bequeathes them nothing more, then the reversion of 20. *l.* per annum after his death; and that in stead of an amends to what was wanting in the first donation; and all this without any alteration or revoking of any thing, title, or clause, in his statutes. It is then clear that he thought 160. *l.* per annum, of his donation together with the *Stipendials* (which mount to ten pounds per annum) of four ordinary professors in the Mathematicks established formerly in the University, which were to return to his professors, *Señ. 12.* to have been sufficient maintenance for his Lecturers; they being not chargeable with any expenses as to Suits of Law, gathering of rents, visiting their grounds, making of Astronomical Instruments, or building a place wherein to make Astronomical observations. All which costs were to be defrayed out of the Mathematick Chest or coffer, *Señ. 11.* Nay which is more, he doth Ordain, *Señ. 10.* that if any of his Professors shall have demeaned himself well in his place, and being aged or through any other casualty disabled as to any longer discharge thereof; the said professor (in case, he shall not already have 100. *l.* per annum) he shall receive during life a third part of his stipend, and his successor (without the liberty of bettering his fortune out of any fellowship, &c.) is to be content with the other two parts untill the said professor emeritus do die.

Thus far we have an account of their Salary, which however they are not content with, yet eminent Persons beyond sea have not so much, and although it be less than he at first designed, yea somewhat less then is expressed (as they say) in the statute, yet is it not so little, but that *Sr. Henry Savile* thought even two thirds of 160. *l.* per an. might maintain either of them. His care that he took least they should be distracted through oth^r employments appears in this ensuing decree *Señ. 9.*

‘Professoribus meis expresse interdicto nequis post Admissionem tuam
 ‘acceptet Beneficium aliquod Ecclesiasticum, cum cura aut sine cura, ne-
 ‘que Præbendam, Canonicatum, aut Archidiaconatum quemcunque;
 ‘nullam Collegii cujuscunque vel Aulæ, vel etiam Hospitalis Præfectu-
 ‘ram; nullam in Collegio quocunque Societatem; nullum in Hospitaii
 ‘locum; nullum in Universitate publicum Officium (ut Vice-cancellarii,
 ‘Procuratoris, Clerici Mercatoris, & similia) sub pena amissionis
 ‘(ipso facto) omnis juris, quod in sua Professione pretendere valeat;
 ‘Et si quis ante Admissionem suam prælatam, beneficium habuerit, aut
 ‘alium quemcunque locum vel officium ex prædictis, ut cum vel ea effici-
 aliter

Stat. Savil.

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Stat. Savil.

‘ aliter dimittat intra spatium sex mensium a prin^a suâ Admissi^one, sub
‘ pena consimili.

i. e. I do expressly forbid my professors, that any of them after his Admis-
‘ sion do accept of any Ecclesiastical benefice, with or without cure; or of any
‘ Prebendship, or Canon-ship, or any Arch-deaconry, what^oever; they shall not
‘ accept of the headship of any Colledge, Hall or Hospital, nor of any fel-
‘ lowship in Colledge, or place in hospital; no, nor of any Publick Office
‘ in the University (as of Vice-chancellour, Proctour, Clark of the market,
‘ and the like) under the penalty of losing (immediately upon any such
‘ act of their’s) all the right which they can claim in their Professourships;
‘ and if any of them before such his Admission shall have any benefice, or o-
‘ ther place or office above mentioned, he shall effectually relinquish it
‘ within six Moneths after his first Admission, under the like penalty.

And further to shew how disengaged he would have them from all vocations, he
saves, Sect. 12. ‘ Equum censeo ut neuter professorum, cujuscunque fuerit Stat. Savil.
‘ gradus, teneatur interesse Congregationibus aut Convocationibus, aut
‘ aliis Conventibus Universitatis (Religiosis tantum exceptis) nisi pro li-
‘ bido. (i. e.) I think it fitting that neither of my Professours of what degree
‘ soever they be, be bound to come to Congregations, Convocations, or other
‘ University-meetings (unless it be religious assemblies) any further then it
‘ shall stand with their pleasure.

As to the observation of these Statutes he saith in the close of all, ‘ Has ordina-
‘ tiones & statuta decerno, perpetuis futuris temporibus, inviolabiliter ob- Stat. Savil.
‘ servari: reservatâ tamen mihi potestate addendi, detrahendi, vel im-
‘ mutandi ea, vel aliquam inde particulam, cum consensu Universitatis,
‘ durante vitâ meâ naturali. (i. e.) I do enact and ordain that these statutes
‘ and decrees of mine shall in after ages for ever be inviolably observed. but
‘ with this caution as to my self, that whilest I live it shall be free for me
‘ (with the consent of the University) to add, to diminish, or vary them, or any
‘ particle of them. His Professour at his admission is thus sworn; Sect. 6.
‘ Ego N. Electus Geometriæ vel Astronomiæ professor, juro me si sciliter, Stat. Savil.
‘ pro meo posse, observaturum omnes ordinationes & statuta, Munus &
‘ Officium meum concernentia, sicut Deus me adjuvet, per Jesum Chri-
‘ stum hoc sacrosancto Evangelio annunciatum. (i. e.) I N. elect professor
‘ of Geometry, or Astronomy, do swear that I will faithfully, to my utmost
‘ endeavour, observe all the decrees and statutes concerning my place and Of-
‘ fice, as God shall help me, through Christ Jesus who is revealed unto us in
‘ this holy Gospel.

Moreover the whole university is sworn to the inviolable Observation of them, as
we find it in the conclusion of the said statutes: ‘ Nos Cancellarius, Magistri & Stat. Savil.
‘ Scholares Universitatis Oxon: prædictæ, pro nobis & successoribus nostris,
‘ statuta,

* Statuta, Constitutiones, Ordinationes, omniaque & singula prædicta
 * approbamus, confirmamus; & ratificamus; præcipientes omnibus &
 * singulis (quorum interest, seu in posterum interesse poterit) ut omnia &
 * singula præmissa firmiter observent, & observari per se & alios faciant,
 * fide eorum data hui: Universitati. (i. e.) *We the Chancellor, Masters,*
 * *and Scholars of the aforesaid University of Oxon: do in the behalf of our*
 * *selves and our successours approve, confirme and ratify the statutes, con-*
 * *stitutions and orders mentioned, both in gross, and as they particularly do*
 * *lie: commanding all and every one (whom either it doth, or may here-*
 * *after concern) that they firmly observe the premises, all and each parti-*
 * *cular, and that they do cause them to be observed by themselves and by*
 * *others, and that by vertue of such oath as they have or shall take to the Uni-*
 * *versity.*

Thus we see that no person but Sr. Henry Savile himself (and that with the consent of the University) is permitted to Adde, Detrahe, or Change any thing [particulam] in the said constitutions: we see that the University, all and each particular member thereof, is not onely sworn to the observation of them in the letter, (as is the Savilian professor too,) but also as they will answer it on their oaths, to enforce the observation thereof upon others. If any doubt (which is neither an Addition, Detraction, nor Alteration of the said constitutions: for such cases are now in the power of no body that I know of) arise about the meaning of any part or particle, I suppose that it is to be determined of, as in case of other Statutes confirmed by the King, of which elsewhere he remits the election of his Professor unto the Archbishop of Canterbury, the keeper of the Great Seal, the Chancellor of Oxon, the Bishop of London, the chief Secretary to the King, the chief Justice of Common Pleas, the chief Justice of the Kings Bench, the Lord chief Baron of the Exchequer, and the Dean of the court of Arches.

Stat. Savil.

Quos (saith he Sect. 6.) illustrissimos Dominos Electores, spero perpetuos fore Patronos, & speciales Protectores Statutorum, jurium & Possessionum ad dictas Professiones pertinentium. (i. e.) *the which Illustrious Lords Electors I hope will be perpetual Patrons, and special protectors of such Statutes, rights and possessions as beloung to the said Professors.* These are to protect the Statutes, not to glosse upon them, so far as they are received into the body of the publique Statutes of the University, and confirmed by the King.

As for the Custos Archivorum, what his Office is we may read, Tit. xvii. de Officiis Stat. Univ. ariis Universitatis, Sect. 9. Ex maturâ deliberatione ordinatum est, ut de cætero, & in perpetuum, de aliquo idoneo provideatur, qui Archivorum & Scriniorum Universitatis curam præbeat, Munimenta & Chartas omnes, tam Authenticas quam alias, Prædia, Possessiones, communia Universitatis Jura & Privilegia; aut publicarum Lecturarum Dotationes concernentia, Registra insuper quæcunque ad Universitatem spectantia, colligat, & in ordinem digerat ac disponat, ut ea, quoties usus poscet, expedire promovere valeat (prout in Statuto de Chartis ac Munimentis Universitatis custodiendis specialiter cavendum erit) Quæ sic disposita & in ordinem digesta diligenter evolvere ac perlegere, a seque in numerate habere

‘habere teneatur, ut Cancellario, Vice-cancellario, Procuratoribus, & Senefchallo, prout occasio tulerit, præsto adesse, eisdem assistere, consulere ac in tuendis & defendendis Universitatis Privilegiis ac Juribus, expeditum & paratum vindicem præstare se valeat. (i. e.) Upon mature deliberation it is Ordained, that henceforth and for evermore, some fitting person be provided, who may take care of the University Archives, and collect, methodise and digest the several Muniments and writings, as well Authentique as other, relating to the Lands, Possessions, common Rights and Privileges of the University, or Dotations of publique Lectures, as also all such Records as any way concern the University, that so he may be able readily to alleadge and produce them, upon any occasion (as we shall in a special manner appoint in the Statute about the custody of the Muniments and writings of the University) which, being thus Methodised and brought into order, he shall be bound diligently to peruse and read over, and to have them at his fingers ends, that so he may be able, upon all occasions, to help, assist, and advise the Chancellour, Vice-chancellour, Professors and Seneschal of the University, and show himself an expedite and ready defender of the University in all it's privileges and rights.

This Office is of late foundation, and had it's original from several inconveniences and prejudices that had befallen the University through ignorance of their privileges, upon divers contests with several parties, but especially the townes-men of Oxon: [‘præcipue vero in quotidianis ferè concertationibus cum Municipibus Oxon: antiquis nostræ Universitatis æmulis, & Privilegia nostra oppugnandi nullam non occasionem captantibus.] betwixt whom and the University there happen daily controversies, out of an old emulation in them to overthrow upon the least opportunity, the rights and privileges of the University. Thus much is acknowledged in the preface to the Statute aforesaid, viz. Tit. vii. Sect. 9. The disposal of this place upon vacancy is in the power of the convocation, [‘Hujus autem Officiarii designatio, quotiescunque Munus vocaverit, penes venerabilem domum convocationis esto] when things are carried by plurality of votes and suffrages, the suffragatours having immediately before they proceed to such Elections first sworn amongst other things, Tit. x. Sect. 11. Parag. 6. ‘Tu jurabis quod neminem ad [hoc Officiū] nominabis, nisi quem ad idem Officiū habilem & idoneum certo sciveris, vel firmiter credideris. (i. e.) you shall swear that you will not nominate any man to [this Office] concerning whose hability and fitness for the said Office you are not certainly assured upon your own knowledge, or at least verily perswaded.

Stat. Univers.

Stat. Univers.

Now, as the Savilian Professor is by the judgement of his founder, ratified and sworn to by the University freed from the obligation of being present at congregations, convocations, and all University meetings, except such as be Religious conventions: and that whensoever he is present at such assemblies, it is onely pro libito upon

pleasure: So this *Custos Archivorum* is upon all occasions to be present at all University Assemblies, to advise and assist the Vice-chancellor, and Proctors: and cannot be absent *pro libito*, but *prout occasio tulerit*, not as he pleases, but as the businesses in agitation shall permit: and it is only Religious Conventions from whence he may be spared, or absent *pro libito*. Besides the *Custos Archivorum* is to be upon all occasions at quarter Sessions and Assizes, to maintain the privileges of the University against the Town: he is to be present at all places where the Chancellor, Vice-chancellor, Proctors and Seneschall shall need his advice, or the University a legal defense: so that if a law-suit happen at London, he is bound to be present there at the prosecution of it (*prosit adesse*) and to continue there *quamdiu occasio feret*, as long as there shall be occasion for his presence. All which is evident to him that shall but attentively consider the words of the Statute, and enquire into the practice of the University in Dr. Langbain's time.

These things being premised, (of which we shall have use severally in the subsequent discourse) I come to examine those Reasons which were printed and scattered amongst the Savilian professors friends, to prove the consistency of the Savilian Professors place with that of *Custos Archivorum*. I shall set them down word for word, and so examine them.

“Reasons shewing the Consistency of the place of *Custos Archivorum* with that of a Savilian professor.

“Whereas some objections have been suggested, as if the place of *Custos Archivorum* were inconsistent with that of a Savilian Professor, because of these words, Nullum [acceptet] in Universitate publicum Officium (ut Vice-cancellarii, Procuratoris, Clerici Mercatus, & similium) sub poena amissionis omnis juris quod in Professione sua pretendere valeat. Though if it were so, a Savilian Professor were no more incapable of being chosen to that Office, then the Fellow of a College to be chosen Head, or presented to a Living, which if he accept he must lose his Fellowship. These reasons are exhibited to the contrary.

In this preface I desire the Reader to observe, that the Savilian Professor knew of our objections against the Savilian Professor, and what exceptions we had in particular against himself, some dayes before the Election: He and his Agents did seek to make a party for him before the Reverend and Learned Dr. Langbaine was dead, yea before that he was given over by all his Physicians: After his decease Dr. Owen was pleased to communicate to the Masters of his House such reasons as did withhold him in point of conscience from assenting to Dr. Wallis his standing: Hereupon the said Dr. Wallis sent little Schedules (a thing unknown before) to his good friends in divers Colleges, to desire them to continue what inclinations they had for him, and if they pleased to repair to him he should satisfy them concerning his capacity of standing; of this import were the Tickets he sent abroad. After this, some hours before the Election time, he prints the paper, (which is now under consideration) and disperses copies thereof amongst his friends, and some few others, (which was a procedure not heretofore used amongst us) leaving none to be publicly sold or seen;

so far he was from any such intention, that he did not so much as leave one soul proof at the printing house: And in these very reasons, he hath touch'd but upon one part of what we objected, which if he had invalidated (as he hath not) yet he knew we had other motives that were not to be eluded. As for this paragraph which he quoteth here, I desire the state of the controversy, as to that foot of account whereon he hath plac'd it, may be rather fetch'd from what I have laid down, then from an imperfect passage. After I have dispatch'd his Reasons, I shall review his parenthesis, because it will administer occasion of further discourse.

‘1. That by *Publicum Officium* is not here meant all publique employment in the University whatsoever, is manifest: for if so, then might not the Savilian Professours be ordinary delegates of Convocation, delegates for Accounts, for Appeals, for Printing, for surveying Records, for making and reforming Statutes, &c. contrary to the known constant usage of the University.

To this Reason I answer, That *Publicum Officium* is a term lesse general then is that of *Publique Employment*, for there may be an *Employment Publique* which is not *Officium*. The very cases that he instanceth in, are not *Offices*, and he that shall look for any such delegates amongst the *Publique Officers* of the University, must seek them some-where else then in our Statutes. If the Savilian professour were going to London, he might be requested to discharge some University business there, and the negotiating of such business were not a *Publique Office*, yet were it a *Publique Employment*. I do not see that he alleadgeth any Statute, wherein it is said that the Savilian Professours are capable of being nominated delegates by the Proctor (or whoever else hath the nomination of them) so that if it were an *Office*, yet nothing can be alleadged but the constant known usage of such a time, as when it pleaseth him, he will not allow a president from it. It was the constant known practice of the University formerly not to nominate the Savilian Professours Delegates of Convocation: upon this account Dr. Bainbridge and Mr. Briggs never were any, nor Dr. Turner. And the case is plain, they could not be so: for the Delegates of Convocation are thus constituted, *Tit. x. Sect. xi. Parag. 7.* ‘Cum varia Universitatis negotia, a paucis citius & commodius, quam a pluribus, expediantur; eoque nomine, selectis quibusdam per domum Convocationis delegentur, qui de iisdem deliberandi vel Statuendi, cum nuda relatione ad Domum, vel cum relatione & approbatione simul (prout prædictæ Domui videbitur) potestatem habent; quos Delegates nominandi jus penes Procuratores esse consuevit.

Stat. Univers.

‘Ordinatum est, quod e singulis Facultatibus, & ex Doctoribus, magistris Regentibus & non Regentibus aliqui seligantur; qui impositum sibi onus subire, & in Congregatione quâvis, Diem Delegatorum conventui destinatum anteccedente, Juramentum corporale præstare teneantur.

‘1. Quod legitimè de die, horâ & loco præmoniti, de tempore in tempus, in locum per Vice-cancellarium designatum convenient.

2. Officium & Munus Delegatorum, super negotiis sibi commissis, sedulo & diligenter exequentur.

3. Non omnino aberunt, nisi ex causa per Vice-chancellarium, & Procuratorem, antea vel post approbanda.

(i. e. *Seeing that several businesses appertaining to the University may with more ease and speed be dispatched by a few, then by any greater Assembly; upon that account some select persons are usually chosen by the house of Convocation to debate, or determine them, being to give up to the said Convocation, either a bare report, or also together with their report to declare their approbation; (according as the Convocation shall think fit) and the nomination of such Delegates is usually in the Proctors power.*

It is Ordained, that out of all faculties, and from amongst the Doctors, Masters, Regent and non-Regent, some be chosen out, who shall be bound to undergo the said charge, and shall take their Corporal Oath in any Congregation preceding the day of such Delegates meeting.

1. That being timely warned of the day, hour and place, from time to time they shall meet where the Vice-chancellor shall appoint.

2. That they shall faithfully and diligently discharge the place and duty of Delegates.

3. That they shall not be absent, but upon such a cause as the Vice-chancellor and Proctors shall allow of before or after their absence.

This is the account which I find upon Statute of the Delegates of Convocation, and it is remarkable that this place of theirs is no more an Office, then if any private person make over a business by letter of Attorney to another, or the House of Parliament appoint a committee of their members to hear, to make report or decide (with giving an account to them) any case or cases: besides the place is not *statum*, but *temporary*, lasting half a year: and withall, it cannot be imposed (as it is upon others, who cannot refuse it, *sive data Universitati*) upon the Savilian Professor. Nor was Dr. Bainbridge &c. every one. These delegates are sworn to be at all meetings whereunto they shall be legitimately called by the Vice-chancellor: and that they will not be absent, but upon such cause as the Vice-chancellor and Proctor shall allow of sooner or later. But the Savilian Professor cannot be bound to such constant appearance at University meetings, since his founder (and the University, with an oath for the inviolable observing it) hath thought it fit that he should not be bound to appear at all Congregations, or Convocations (to which we are summoned with this citation by the Beadle, "Ad convocationem omnes doctores, & Magistri Regentes ac non Regentes— per fidem, per fidem, per fidem.

(i. e.) *All Doctors and Masters whether Regent or non-Regent, to the convocation— upon your oath.* Now if this general citation do not comprise the Savilian Professors, how can any one imagine them to be contained in the number of such as by the said Statute may be delegates? or finally at any University meeting, but *prohibito*, as he please. Now if any one shall so construe this clause, (as I Profess I know not who can so expound it, and satisfy his conscience, which can acquiesce in nothing but the undoubted will of the Founder.)

yet if any shall so construe it as that he may *binde himself* to be present at such meetings as these are; (though I know not why *Sr. Henry Savile*, in whose time there were *Delegacies*, should either not allow him to be charged with that *burthen*, as the Statute calls it; or free him from the *enforcing power* on the University side, and leave the *accepting power* on his own side.) However it may be done *for once*, it may not be done of *constant usage*, by any *voluntary seeking* of the *Savilian* professors, for then it undeniably followes that *Sr. Henry Saviles* will is overthrowen, and whereas he thought it fitting that he should not be bound to be present at University-assemblies whatsoever, (except religious) by such a procedure it happens that he is bound upon a constant usage to be present at all delegacies, and never to be absent but upon a cause to be approved to the Vice-chancellor and Professors, which is not *libitum*, his own pleasure. I leave then the *Savilian* professor to ruminate upon that *known constant usage of his*, and find out a way how he may satisfy his own conscience; as I hope the University hereafter will be awaked, and mind what they have sworn to, viz. to think it fitting and just that neither of the *Savilian* professors be bound to be at any University conventions, and when they shall have thought thereof, and that the delegates are bound faithfully to undergoe their charge, or *onus*, and to be present upon all due citations; and that upon oath: they will be more cautious, and neither chuse nor admit of the *Savilian* professors to such kind of employments, since that their usage is alleadged to so ill a purpose. As for the other Delegacies they are of far shorter avocation, then this of Convocation: what their nature is, I find little light in the statutes: whatever their nature be, he is no more eligible here, then in that of delegacy to convocation, of which I have spoken largely: and I leave it to the judgement of any sober man, whether that founder, who freed them from coming to necessary conventions, (as congregations, if the Professor be *Magister regens*; and convocations, whether *regent* or *non regent*) could ever intend that his professor should be subjected (by himself or others) even to such as are not such: certainly mistakes on the one side and actions pragmatically undertaken on the other do not prescribe.

And thus much may suffice for answer to his first reason, taken from the employment of delegates, whereunto the *Savilian* professors have been admitted, according to the *known constant usage* (in latter times) of the University, and which cannot be drawn into any example since *Sr. Henry Saviles* constitutions are in full force yet, neither can we our selves by way of decree, nor our *known constant usage* (more then our selves in Convocation) serve to expound them, or abrogate their validity.

Tit. x. Sect. 11 Parag. 5. De materia indispensabili, in qua Convocationi
 dispensare non permittitur. Quia ex minimâ dispensandi licentiâ grave incommodum antehac obortum est (nec aliter fieri potuit) Statuit & decrevit Universitas, ne in posterum dispensationes ulatenus proponantur in calibus sequentibus. Et primo statuit & declarat, ne super aliquo Statuto vel Decreto (authoritate Regiâ jubente vel monente) condito vel condendo, in toto vel in parte Dispensatio proponatur; nisi pari authoritate Regiâ, ejusdem mutatio, vel aliquis relaxatio, expresse mandata vel permissa fuerit.

Secundo statuit & declarat, ne circa supremas Benefactorum defunctorum Voluntates, aut Ordinationes eorum quascunque Universitati

‘commendatas ——— nec circa Ordinationes aliquas ex Benefa-
 ‘storum voto vel rogatu, cum Universitatis consensu, editas vel eden-
 ‘das ——— quicquam postea immutetur, vel de eodem immutando
 ‘petitio aliqua in v. domo Convocationis fieri permittatur, (i. e.)
 ‘Concerning matters indispensable, in which cases the house of convocation
 ‘cannot dispense. Because great inconveniences have befallen the University
 ‘heretofore, (as it could not but happen) by reason of a too frequent use of di-
 ‘sposing, the University hath enacted and decreed, that from hence for wards
 ‘no dispensations upon any account shall be proposed in the cases following.
 ‘And first it is resolved and enacted that no dispensation be proposed concern-
 ‘ing the whole or any part of any statute made or to be made by the appoint-
 ‘ment or advise of the Kings Majesty: unless the King expressly command or
 ‘permit the change or relaxation thereof.

‘Secondly, it is enacted that nothing at all be changed in the last wills of
 ‘any Benefactors, or in any such constitutions of theirs as are recommended by
 ‘them to the University. ——— or in any constitutions made at the desire or
 ‘request of any benefactors, by the consent of the University ——— or that any
 ‘supplication for any such change be admitted in the house of Convocation.

2. Reaf. The statute expressly declaring what kind of publick offices it
 ‘doth intend (to wit, that of Vice-chancellor, Proctour, Clerk of the
 ‘Market, and such as are like these) is not to be extended beyond such as are
 ‘mentioned. Now it is manifest, that this is neither one of these three there
 ‘mentioned, nor yet of the like nature with any of them: they being all Offices
 ‘of Government this only place of trust.

I could have found out another difference then this betwixt the two places: and
 it is this: the places instanced in are annual, or biannual, at least of a short time
 and durance: the place which the Professour seeks is perpetual: and certainly he
 who prohibited them places of short continuance and lesse trouble (I doubt not to say
 that the Clerk of the Markets place is not of so much trouble, nor an employment
 so inconsistent with his Lecture as this Custos Archivorum is, or may be, when Law
 suits come to be prosecuted at London.) But to come to more close reasoning.
 I have laid down what I think clearly to have been Sr. Henry Saviles intention in en-
 dowing the Lectures in the state of the case: but what reason can any man imagine
 why he should permit them places of Trust, and not of Government? He was not a-
 gainst their having personal estates, why did he prohibit them sine-cures, and fellow-
 ships in Colledges, or place in Hospitals which are not Offices of Trust, nor trouble
 like to this of keeping the Archives? How much more easy had it been for the
 Founder, if he had Harboured the Doctors thoughts, to have said ‘nullam [acceptat]
 ‘publicum in Universitate Magistratum (ut Vice-cancellarii, Procurato-
 ‘ris, Clerici Mercatus, & similia) rather then Officium, which is a more
 general

general Term, and even at the time there were more publica in *Universitate Officia*, then there were Offices of Government, as for instance, the University Orator? If he can find out any other Substantive for *Similium*, then is *publicorum in Universitate Officiorum*, I shall grant it: if not, I who am sworn to the letter of the Statute (as he, and all else are) dare not distinguish where the Law doth not. I think it is sufficient that in the place, I find '*Nullum in Universitate publicum Officium (ut Vice-cancellarii, Procuratoris, Clerici Mercatus & Similium)*' (i. e.) that he accept no publick Office in the University (as of Vice-chancellor, Stat. Univers. Proctor, Clerk of the Market, and the like publick Offices in the University) and to know what are alike to those places, or Offices, I look in the publick statutes, and *Tit. xvii. de Officiariis Universitatis*, under the same head I find ranked the Chancellor, Vice-chancellor, Proctors, Masters of the Schooles and Streets, the University Orator, the Clerk of the Market, and (Sec. ix.) the keeper of the Archives; from hence it is easy to collect, joyning the Inscription of *Tit. xvii. de Officiariis Universitatis*, with the inscription of *Sec. ix. de publico Archivorum Universitatis custode designando*, that the *Custos Archivorum* or keeper of the Archives is a publick Officer of the University, [*publicus Universitatis Officiarius*] and consequently that such a place is a place of publick Office in the University, [*publicum in Universitate Officium*] and that too, as is the Vice-chancellor, Proctors, and Clerk of the Markets: they being all digested under one common Title: so that for their *Similitudine*, I have the vogue of the University in its statutes on my side. And whereas the Doctor saith, "This place is none of the three here mentioned, nor of the like nature with them. The latter part of the Assertion is apparently false (besides what I have shewed out of the statute-title) unless he will maintaine that paradoxe, that there is no resemblance but in identity. I suppose by this time, that any one will grant the Distinction of places of Government, and places of Trust, to be an Addition to the text: and I suppose my reader to remember out of the stating of the case, how *Sr. Henry Savile* reserved the power of adding, taking away or changing any particle [*particulam*] to himself, and that so as it was to be done with the consent of the University in Convocation; he did not leave any such power after the end of his natural life to his Lecturers; or if he had, the consent of the University must have been gained to the Authentication of such an accessional, without which none in point of conscience could own it: I desire them to know how the Doctor could safely obtrude this distinction, or how any could allow or assent upon it, who had been sworn to the Statutes of *Savile*, accordingly as I have premised the case? Besides, granting such interpolations to be any way lawful (of which we ought to be very tender in the Probare of wills) what doth he trouble us therewith at *Oxon*, who cannot interpret the Statutes? This plea then before them who were sufficiently improved to expound the statutes might be employed, but not before us, and whether it should be there found pertinent, or impertinent I could not acquit the Doctor from breach of Oath, who is bound (as I have shewed, *pro posse suo*, to his utmost endeavour to observe the *Savilian* constitutions: and that he doth NOT do, who upon the quirk of an uncertain distinction, runs the hazard of violating the said Statutes. How much more might he urge this argument in quest of the Register or any Bedels place, since that they are not places of Government, nor ranked with the *Officiarii Universitatis* in the statutes? yet I believe no Conscientious man would dare to suffragate for him in the cases mentioned.

3. *Reas.* The employment of *Custos Archivorum* is so far from being

ing one of the Offices intended in the statute, that 'twas not in being when the statute was made : and therefore cannot be reputed one of those intended : but at the most *casus omissus* *.

* Though the Office of Cu-

sto Archiverum were not formerly in being at that time, yet the employment and duty thereof belonged to the Register, which place (notwithstanding it be ranked under a different title in the Statutes,) may very well be reputed amongst them of like nature.

This is a strange reason ! for, cannot a man forbid things that are not in being ? yes certainly, and with a great deal of prudence, if the case be possible. Do not we finde the Athenians and Romans ; the latter to have made Laws against Parricides, before there had been any : and that the other made none (but might have done) in the like condition ? But to allow him that construction of *in being*, that by it hee should mean not so much as *though* : upon may not such cases be in general termes prohibited, though they cannot be particularly expressed ? Since we have the general prohibition of *et similia*, and the like, we will not grant it to be *casus omissus* in this place ; unless he will mean that it is not particularly enumerated, and so it is as true that one, two, three, do not make four. Would the Doctor be thus baffled out of an Estate if it should descend to him, being conveyed to A. B. and his heirs lawfully begotten, because he was not in being when the deed was made : and therefore cannot be reputed one of those there intended : but at the most, *persona omissa* ?

If it be objected, that though it be written in the letter of the Statute, yet there may be as much reason why the Founder might have forbidden this, as some of those which hee did forbid, and therefore that it might be thought within the equity of the Statute.

This answered, not onely that we are not to enquire, especially in Penal Lawes, what might have been forbidden, but what is : or that *et cetera's*, *et par ratio*, are not in Law, of any great weight for drawing in other crimes besides what are particularly expressed (though in point of favour, they are good grounds for relief in equity, against the rigour of a Law) or, that penal Statutes are to be interpreted in the more favourable sense.

This ill favoured objection seems to have been brought in that we might have a rest of what Law the Candidate had, the knowledge of which is requisite for the faithful discharge of the place of *Custos Archiverum*. From what I have replied to the precedent third reason, there is no occasion for this Objection : I say that the place is directly forbidden by the clause of *publicque Offices in the University*, as that of the Vice chancellour, Proctour, Clerk of the market, and the like. As also by irrefragable consequence in the other clause, whereby his Founder and the University do not think it fit and just [*aequum consent*] that the Savilian Professours should be bound to be present at any University meetings further then *pro ibito*, as they pleased. As for those arguments *a pari*, *a fortiori*, *a minore ad maius*, I do not think them to be overthrown by what the Doctor replies, in the judgement of any conscientious man, who if he will be pleased to imagin himself in Sr. Henry Saviles posture when he wrote those statutes, will presently think that he who did prohibit him places of self trouble (for it was not, nor can be imagined to have been in Sr. Henries mind to prohibit his professors the having an estate) and of shorter continuance, would not allow him places of greater trouble, and of perpetual durance : and this argument will over rule a Maxim of that Law, which we are not bound to study, or proceed by : nor do I think

* It is a great it allowable in the probate of Wills *:

mistake, say

some that are understanding Lawyers, to think the statute prohibiting the Savilian professor to bear

any

publick Office, is a Penal statute: Follows of houses if they Marry, or be other wayes preferred, or super-annuated shall lose or leave their fellow-ships, it is no penalty but a deprivation of the benefit which formerly they enjoyed, and which in all reason ought to be in the power and will of him who is the Author of the benefit. And though the Statute say *sub pena amissionis*, &c. yet that is to be understood as spoken in a general way of expressing the English phrase, *upon pain*, and not *upon penalty*. But supposing it to be a Penal statute, yet neither will the usage either of the Civil Law, or of our Common Law necessitate us to a more favourable sense. For the practice of the Civil Law, I can quote no greater Author then Dr Zousch de judic. inter gentes. Sect. 8. qu. 8. where notwithstanding that maxim, *Elisam Penale non est extendendum*: Penal statutes are not to be extended. *E contra statuitur*, it is resolved to the contrary, &c. As for the case in Common Law, the intents of the makers are the Expofitor of Penal statutes, and not the words. As in the statute *de vifib*, if any makes waste in Lands which he holds *ex dimifione*, yet if his Estate be *ex legatione*, he shall be punished by the equity of the statute: and yet the statute is Penal. But the minds of the makers were so, and therefore it hath been so used since. *Plo. Comfol. 10. a.* So the statute of *quia emptores terrarum* &c. though it be Penal, yet the words *secundum quantitatem terre*, have always been expounded *secundum vulgum terre*, which is agreeable to the intent. *Plo. Com. ibid. Fitz. abr. tit. Barr. 309.* And where the penalty is onely *modus & limitatio domi*, it is not so much Penal as restrictive: which power as every man hath to limit his own gift, for *modus dote legem Donationi*. *Fleta*. So it is in every mans power to refuse the gift, or undergo the qualifications, if he accept, for *qui sentit et annuam, sentire debet & onus*. But whether the statute be Penal or no, in a case of conscience, in doubtful matters (and such are they which are reduced under the construction of a favourable sense) it is the securest and most satisfying way for him that is to interpret, that he be cautious and wary, and rather offend on the right hand by too much strictness, then on the left hand by a supine negligence. And this is a way the least discouraging and disobliging to future benefactors, and argues a tender regard over the wills of such as have already endowed us.

However, whether the Maxim of Penal statutes be applyed well, or misapplyed, it is an evident detraction from the statute, and *dissannuls* the particle (*particulam*) & *similium*, and the like: so that, as the distinction into Offices of Government and Trust, was an addition to the Text: so this is a most apparent diminishing therefrom: both are inconsistent with the Oath of the Savilian Professor, and both the promoter of this Maxim, and the suffragatours upon such an inducement, are (in my opinion) guilty of a perjury of the deepest dye. He saith, "We ought not to enquire what might have been forbidden, but what is. I am of his judgement, and desire to add, that we ought not to think of what *subdistinctions* might have been made, but what are: nor, of what might have been omitted, but what is. He saith, "That & *cetera*'s and *par ratio*, are not in Law of any great weight. He should have done well to have shewed how far they were valid, and what weight they would bear: otherwise his Partisans could not be satisfied but that the clause which was not of any great weight, might signifie more then nothing, yea, it must do so, (according to what is implied in the Doctors expression) and things that are of little weight in due place (upon the turning of a scale) may be found very considerable. But wialah, what an affront doth he put upon his founder, by charging him with inserting into his statutes (an act of high deliberation and study) such a clause as is of none, or not of any great import? and upon the University, for ratifying it so solemnly? Either Sir Henry Savile must be concluded ignorant in the Law, and inconsiderate in the procedure; or we are to think that he did not intend that the usage of Courts of judicature at London in criminal causes should be obliging at Oxon in retrictions of Wills. Thirdly, he saith, "That Penal statutes are to be interpreted in the more favourable sense. I have already excepted against the application of *valer out* of the Courts of Common Law, to transactions in the University: to this I further reply, that

that it is not to be so understood, that such favourable construction be put upon the words of any statute; much less those of *benefactors*, as overthrows the intention of the statute; as in the case before us it doth: the two places being *impossible* and *inconsistent*, as I have shewed in the office of *Custos Archivorum*, and my discourse about delegates, and elsewhere. The *favourable sense* must not be *non-sense*. But supposing the truth of that Maxim, even the Doctors sense (though in such a case as this is we cannot be too tender, lest we discourage other men from future donations) yet should the *Saxilian professor* have known that this plea is wholly unreasonable: for we have not the power of interpreting, as I have shewed in the state of the case. And if the University had been endowed with such power, yet that would not reside in each *private* persons breast; and so, though a *favourable sense* were to be put upon a *penal statute*, yet every one might not affix it, but he that hath the power so to do. Our process for interpreting statutes, is this, Tit. x. Sect. 11. Parag. 2. 'Siquando circa statuta & decreta jam con-

Stat. Univers.

'dita, vel in posterum condenda, dubitatio aliqua emergat, unde ulterior eorundem explanatio requiratur, (modò ne, sub explanandi ob-
'tentu, sensus statuto cuivis affingatur, omnem ipsius vim eludens aut
'enervans; neve hæc explanandi potestas ad statuta Regiâ autoritate
'sancita vel confirmata extendatur, sine speciali ipsius Regis licentiâ)
'statutum est, quod, priusquàm statutum explanandum suffragiis Magi-
'strorum Regentium & non Regentium permittatur, primo ad hebdo-
'madalem confessum præfectorum Collegiorum & Aularum per Vice-
'cancellarium referatur negotium.

'Atque ubi, re maturè perpensâ, inter eos convenerit de verbis con-
'ceptis, sub quibus statutum explanandum illis videbitur, sub iisdem
'terminis res ad Magistros Regentes in Domo Congregationis, per
'Procuratores referetur, triduo ante Convocationem habendam.

'In Convocatione autem sequente, iisdem verbis, quibus in Congre-
'gatione proposita fuerat, per Registrarium, Mandato Vice-cancellarii,
'palam recitetur. Ac denum ubi Vice-cancellarius, Procuratores, &
'major pars Regentium & non Regentium in terminos consenserint, sub
'quibus statutum explanandum videbitur, sub iisdem terminis per Regi-
'strarium palam ibidem recitetur, & de eodem Regentium & non Re-
'gentium suffragia rogentur, sub iisdem etiam terminis, in quos con-
'sensum fuerit, in Acta redigantur; nec ante diem trigesimum, imme-
'diatè sequentem publicationem sive recitationem eorundem in Domo
'Convocationis, vim aut Autoritatem decretorum sive statutorum sorti-
'atur. (i. e.) If there arise any doubt about the meaning of any Statute, ei-
'ther already made, or which shall be made hereafter, so as further explication
'thereof be necessary (provided, that under pretence of expounding any sta-
'tute, such sense be not put thereon as eludes or enervates the force thereof;
'as also, that this power of explaining statutes do not extend unto such
'statutes as were confirmed or enacted by the Kings Majesty, without a spe-
'cial grant and licence from the King) It is ordained, that before any statute

‘to be explained, be proposed to the suffrages of the Masters Regent and non-Regent, that it be first debated on by the Vice-chancellor and the Heads of houses in their weekly meeting. And, when they upon mature deliberation, shall have agreed upon the words, whereby they shall think it fit to expound the statute, then the Proctors shall make a relation of the business in the self same termes to the Regent Masters in the house of Congregation, for three dayes before the Convocation is to be called. In the Convocation ensuing, the case is to be proposed in the same words it had been read in Congregation by the Register, at the command of the Vice chancellor; and at last, when the Vice chancellor, Proctors, and greatest part of the Masters Regent, and non-Regent, shall have assented to the termes whereby the statute shall be put to the suffrages of the Masters Regent, and non-Regent. And this is to be engrossed amongst the Acts of the University in the same termes, in which it is agreed upon; nor shall any such interpretation receive the force and validity of a statute, till thirty dayes shall be expired after such recital or publication in the house of Convocation.

I have set down at large our Process in the explaining the statutes, that so any one may see how tedious a work it had been to expound the statutes controverted, (if it had been in our power so to do) that so it may appear how much it concerned the Abettors of the Savilian professor to acquiesce in the private interpretation of their Favourites, and in Convocation afterwards to shuffle up the business by denying us the just interpretation of a Statute either making against them, or at least being confessedly ambiguous, and the Exposition of which was clearly in the power of the University. But that the exposition of Sir Henry Saviles statutes is not in the hands of the University (nor perhaps in the power of the special Protectours) it is clear by this Statute: for they were ratified and confirmed by the Kings Majesty, for thus saith Sir Henry Savile: Parag. 1. Ego Henricus Savil Stat. Savil.

Miles, ex Autoritate Regia & cum consensu Universitatis Oxon: fundo & stabillio-----duas Lecturas----- (i.e.) I Henry Savil Knight, by the Authority of the Kings Majesty, and with the consent of the University of Oxon, do found and establish - - two Lectures-----So that it is evident, that the power of expounding these constitutions did no way reside in the University, (as I think) or if it did, yet to interpret them we must have got leave from the Supreme power, otherwise we had run into a premunire: And I think it an unjust request for the Doctor to desire his good friends to admit of his glosses and favourable sense, retaining their private capacity, which all of us by way of publick enacting could not do. Thus much may suffice to invalidate what the Doctor hath said, by way of plea in point of equity, and what he saith further unto the end of his discourse, which is grounded upon the same mistake: for thus he proceeds.

‘But also, that in equity there is much more reason for relief against these particulars which are expressed, then to draw in such as are nor, because the revenues of the Savilian professors came much short, nor onely of what Sir Henry Savil did intend to settle, but of what he thought he had, and the Statutes do expressly presume to be actually settled: And therefore no reason to make the prohibition of other employment more strict then he hath made it, but rather more lax.

Upon what he hath here laid down I desire to observe: that (as I observed in my stating the case) Sir Henry Savile did know how the revenues of the Lectures

were left then he had expressed in the statutes : and to make amends for it, he added 20 l. per annum more. I have already given an account of their in-comes. as I find them authentically registred ; I would the Doctor had set down how much they are at present, that we might have seen how far his salary exceeds that of *Robertus, Gastendus, or Bullialdus* : whatever they are, Sir Henry knew it, and yet did not by his will alter, or desire any of his statutes might be altered : So that I cannot but reflect upon this passage as impertinent in reference to us in general, and to his good friends in particular, who are not in a capacity of determining of what 'relief he ought to have in reason AGAINST those particulars expressed ; and also as an high breach of the oath (which I set down in the beginning) which he took at his admission to the professorship : which breach is redoubled by that conclusion of his, 'That there is no reason to make the prohibition of other employment more strict (as we do not, nor can do) 'then he hath made it, but rather more LAZE. This plea is not to be insisted on by one who is sworn pro posse suo, to his utmost to observe his founders statutes.

* And upon this account, not only Dr. Bainbridge (though a Professor of Sir Henry Saviles own appointment in his life time) continued with it, his practise of Physick (an employment both of greater gain, and greater diversion then this *Custos Archivorum*) and also a place in Merton Colledge : But also Dr. Turner, before a Committee of Parliament, justified his holding a fellowship (though in that Statute expressly forbid) together with his Professours place, And Mr. Greaves enjoyed the profits of his Professours place, together with his fellowship of Merton Colledge. And though these two latter examples being against the letter of the statute might therefore be thought more disputable : yet in the present case, where no such thing is, there is no reason upon pretence of equity, to make the statute stricter then it is.

The Paragraph is wholly impertinent in the University, as proceeding upon a supposal of power in us to mitigate the statute on the one hand, and an endeavour to make it stricter then it is on the other hand ; both which are apparently false : If the thing sued for be an Act of Grace, then it is breach of oath in him to move it in a very signal manner, he being sworn particularly to the observation of Sir Henry Saviles statutes. Any other fellow of a Colledge, or other way officed, might stand to be Savilian professor, because it is in his power after six moneths to relinquish the one or the other : but he who is enstated in the Professurship cannot do so : If he accept any such like place as is specified in the statute (and where the accepting is criminal, the suing for it, is much more culpable) he is punished (and every punishment presupposeth a fault, and the fault must be a breach of statute ; it can be nothing else) with the loss of his place immediately : as I have fully shewed in the beginning out of Parag. 9. Stat. Savilian. Moreover it is false, that upon this account (*viz*, because the revenues were less then Sir Henry Savile had purposed, or set down) that Dr. Bainbridge held a place in Merton, or Dr. Turner his fellowship, or also Mr. Greaves The place which Dr. Bainbridge held in Merton is, that of Physician to the Colledge, being no prohibited Office, 'as the Doctor in his reason seems to grant) a thing of little profit, and less diversion, as any man that knows how few are sick in our Colledges, and how little tendance they require, will grant. His ordinary Practise of Physick was not of greater nor more necessary diversion then the *Custos Archivorum* is, and may be it doth not fall under the prohibition of any Savilian statute ; Nay, it is supposed by Parag. 9. that he may be a Physician as well as Divine. For in that Section the Professor is prohibited all preferment or Benefices Ecclesiastical, which supposeth the Professor may be a Divine ; and doth not prohibit him all preaching, but tying himself to a place, to the discharge of which he being necessarily obliged, might be forced to neglect his Lecture. So the said Professor is pro-

hibited to be *Master*, or to have any place in an *Hospital*, which supposeth that he may be a *Physician*, & doth not evert any *casual* but *necessary* *Practise*: And that the Doctor had any such engagements upon him, I do not hear. That *Dr. Turner* did justifie his holding the *Professors* place, together with his *fellowship*, it is untrue: for first, any conscientious man will see, that it was directly against the tenour of the statute, to which he and the *University* had been sworn and so it was not possible for him to justifie it. Secondly, when he was summoned before a *Committee* of *Parliament*, it was about another case; he having commended the happiness of *Qu. Maries* times, in the *Preface* to the *University* statutes, was suspected for a *Papist*, and upon that account examined by a *Committee* of *Parliament*, and of that accusation did acquit himself: but as to his retaining his fellowship, he was not questioned about it by the *Committee*, but by a *private* member thereof in *Committee*, to which objection by the by, what he replied I have not heard, but the *Committee* of *Parliament* being not delegated to that end, did not search into that business; And therefore it is true, that upon this (or any other) account he did justifie himself to the *Committee* of *Parliament*. I have better thoughts of the late *Parliament* then to think they would have justified him in such an *Act*, seeing that the *Bishop* of *London* and others would not: the case how *Dr. Turner* carried his business in getting the *Professors* place, and holding his fellowship, was thus. Having gotten (by means unknown to me) an intimation under the *Lady Savil* (Widow to *Sir Henry Savil*) her hand, he addressed himself to *Bishop Laud*, *Bishop of London*, telling him that *S. Henry Savil* did intend if he had lived longer to have altered the Statute, prohibiting his Professors to be *Heads* or *Fellowes* of *Colledges* or *Halls*; and for this he vouched the *Lady Savils* hand: whereupon he desired the *Bishop* to procure the *Kings* Letter of *Mandamus* in his behalf, (in consideration of such intent of *Sir Henry Savil*) that he might have the Professours place and liberty to hold his fellowship. This Letter being brought to the *Vice-chancellour*, he protested against the fact as being *perjury* in *Dr. Turner*, (yet admitted him upon the *Kings Mandamus*) and going to *London*, he acquainted the *Bishop* with the illegality of the fact, and of the ill consequences that might be drawn from such *presidents*. The *Bishop* did forthwith ask *God* forgiveness, and said he should lessen that esteem he had for *Dr. Turner*, from that time forwards, as having violated his oath: yet would not that the *Kings* Letters should be recalled: the *Lady Savil* hearing how she had been abused to the disannulling of her *Husbands* Statutes, did remonstrate against *Dr. Turners* actings; and in *Merton Colledge* they protested against his being *Fellow* of the *Colledge* any longer then six moneths after his being possessed of the *Lecture*: and ever after, what profits he received from that *Colledge*, they profess that they were continued unto him not as due, but enforced by vertue of the *Kings Mandamus*, and he was alwayes looked upon as a perjured person in that *Colledge*. This is the true state of their two cases, as severall men of worth and integrity are ready to depose. As for *Mr. Greaves* he never was possessed of the place of Professour, for it happening that he was nominated in the time of the Wars, he was neither admitted thereunto by the *University*, nor could receive any Rents, the Lands lying within *Kent*, and beyond *London*, in the *Parlements* hands: whereupon he had a title to the place indeed, but there was no reason he should relinquish the profits of his Fellowship for the Obligation of that *Lecture* to which he had not been admitted, nor could receive at that time any actual emolument.

Whereas the Doctor in his reasons saith, That he enjoyed the profits of his Professours place, together with his Fellowship of Merton: It is no farther true, then that he being nominated or elected Savilian Professour, though never admitted, did at the visitation prevail with Dr. Reynold; and the rest, so as to receive the emoluments of a place to which he was entituled, and had been admitted if there had been any University in being. So that he received the profits when he was upon leaving the possession of his Fellowship, and his title to the Lecture: which way of enjoying the profits, is not taken notice of by the Doctor, yet it diminisheth the Authority of the president. Mr. Greaves did sollicite the King that he might be admitted to the same favour which Dr. Turner had enjoyed, but it was refused him. (Dr. Turner opposing it) and when he alleaged Dr. Turners example, Judge Heath, one of the *Ecclesiars* and Protectors of Sir Henry Savils statutes, sent for Dr. Turner and expostulated the case very sharply with him, telling him that he deserved to be laid by the heels; and further added, *How it was by reason of such as he abusing the Kings favour, that his Majesty was become so odious to his Subjects.* You see what was the sense of judicious men concerning their cases, which the Doctor alleadgeth for presidents.

These were but bad grounds for his good friends to build their satisfaction upon, which if they had been true, they could not, ought not to take any notice of. We do not make the Statute any stricter then it is, as I have already shewed: so that in Opposition to his Conclusion,

* So that neither the letter of the statute, nor the equity of it, can in reason be interpreted to exclude the Savilian Professours, as inconsistent with that of *Custos Archivorum*.

Stat. Savil.

I may contrarily say, that the letter of the statute, Parag. 9. Prohibiting them all publick Offices in the University, as of Vice-chancellor, Professours, Clerk of the market, and the like, (according as I have represented in this discourse) and Parag. 12. where his founder doth think it *equitable and just* that he be not bound to be present at any University Assemblies, in reason and equity ought to be interpreted to exclude the Savilian Professour, as inconsistent with that of *Custos Archivorum*.

Thus I have weighed all his reasons in an equal ballance, and find that upon them may justly be written *TEKEL, Thou art weighed in the ballance and found too light*: It being not possible for any man to satisfie his conscience with the foregoing motives; which if they had brought the question to some degree of probability, (as they have not) yet upon a controversie about the meaning of a statute, till the decision thereof none could give him their suffrage, in faith, and upon a full persuasion of the lawfulness of the Act, without which such votes had been sinful. I come now to examine the *Parenthesis* which he layes down in the Prologue to his Reasons, *viz.*

* Though it were so [sc. that a Savilian professour could not accept any publick Office in the University under the penalty of losing immediately all right to his Lecture.] Yet a Savilian professour is no more incapable of being chosen to that Office, then a Fellow of a Colledge to be chosen Head, or presented to a living, which if he accept, he must lose his Fellowship.

This *Parenthesis* is of a different nature from the Reasons that follow upon it: there he pleads for a consistency betwixt the two places (which if any man do doubt to have been upon the Doctors thoughts, the inscription and the tendency

dency of the reasons I have already enervated, will convince it,) here he teacheth upon their *inconsistency*, and his being in a possibility of being *chosen* to the one with the *loss* of the other. Against which I say, that the Law or Statute is by him acknowledged to be *penal*, and (granting his supposal) the *penalty* is inflicted upon his *acceptance* of such a place or *Office*: now if every *punishment* imply a *transgression*, and the *acceptance* be *punished* after such sort as is specified in the Statutes of Sir Henry Savile. I cannot but think his *acceptance*, much more his *seeking*, to be violation of those *edicts*, and consequently *breach* of oath in him and all such as did *abet* him: Nor is the similitude good which he makes betwixt his *condition*, and that of a *fellow* that is *chosen* head of a *Colledge*, or presented to a *Benefice*; for I neither know, nor can imagine that *Fellows* upon such preferment are outed their fellow-ships by virtue of any *penal* statute; as he grants the *Savilian* professour is in the cases specified. But to pass by this consideration, and to grant that the *Savilian* professour is in *such* a possibility of being *chosen* *Custos Archivorum*; yet is not Dr. Wallis much advantaged by this *concession*, he being excluded upon another account: I am sorry he passed by this exception, it would have made much for the satisfaction of his good friends, if he had allayed it, it being in the mouths of many.

The Office of *Custos Archivorum*, is, that he defend us in our rights and *privileges* against all opponents: and he is to alleadge in our defence what is or can be spoken, as a Lawyer doth in the management of his Clyents case, leaving the issue to the judgement of others. This being premised, we had just cause to doubt whether Dr. Wallis could stand for this place, since there are or may be several controversies depending (as I am told) betwixt us and Cambridge, to which University he is thus pre-engaged at his Matriculation there.

Iuramentum a singulis Scholaribus in Matriculatione præstandum.

‘Cancellario, Procancellarioq; hujus Academiæ CANTABRI-
 ‘GIENSIS, quatenus jus fasq; est; & pro ordine in quo fuerim, quamdiu in hac Republica degam comiter obtemperabo;
 ‘Leges, ac Statuta, Moresq; Academiæ approbatos observabo, vel
 ‘Monitiones, Correctiones & Pœnas eorundem transgressionibus
 ‘incumbentes, humiliter subibo. Academiæ Privilegia, quantum
 ‘in me est, conservabo. Pietatis, & bonarum literarum progressum, & hujus Academiæ statum, honorem & dignitatem tuebor quoad
 ‘ad vivam, meoq; suffragio atque consilio rogatus & non rogatus defendam: Ita me Deus adjuvet, & sancta Dei Evangelia. (i. e.)

The Oath to be taken by every Scholar at his Matriculation.

‘I will civilly obey the Chancellour and Vice-chancellour of this University of Cambridge, as far as it shall be just and lawful, and according to my degree and quality, as long as I shall continue in this
 Repub-

‘*Republique, I will observe the Laws, Statutes, and approved Customs of the University, or else with humility undergo such Monitions, Corrections, and Punishments as the transgressors thereof are lyable to. I will preserve, as far as I can, the priviledges of the University. I will uphold and maintain the advancement of piety and good learning, the welfare, honour and dignity of this University, as long as I shall live, and shall defend the same with my suffrage and advice, whether importuned, or not importuned thereunto: so help me God, and his holy Gospels.*

Stat. Univers.

This is the obligation whereby he is bound to the University of Cambridge as long as he lives: at his Incorporation into Oxon, he took onely this Oath. Tit. ix. Sect. III. Patag. 1. ‘*Magister, tu dabis fidem, ad observandum Statuta, Privilegia, Consuetudines istius Universitatis, quatenus Statutis, & Privilegiis, Consuetudinibus & libertatibus Universitatis [Cantabrigienlis] non repugnant. (i. e.)* Majier, you shall swear to observe the Statutes, Priviledges, and liberties of this University, as far forth as they are not repugnant to the Statutes and Priviledges, Customs and Liberties of the University [of Cambridge.]

From hence it is clear, that the Doctor is not capable of any such Office as doth tie him to maintain what is opposite and repugnant to his Matriculation Oath of Cambridge: but such is this place of *Custos Archivorum*, by which he is bound, as a Lawyer to his Clyeat, to defend our priviledges: how then could he ambition, or we give a place which (to our knowledge) he was not capable to discharge? How could any man give him his suffrage as being firmly perswaded or certainly knowing of his hability? Is it not implied in the Oath of Incorporation that there are (or may be, and then where is Antiquary would-be?) priviledges granted to our University that do (or may) repugne to those at Cambridge? why else is that clause inserted? Or, Is it not recorded that the two Universities have had a contention about Priority and Precedence? And is not that a priviledge? a part of Honour and Dignity? How then can he desert Cambridge, or defend us? Heylin in his Geography (in fol.) p. 207. ‘*speaking of the precedence of Oxford before Cambridge, he mentioneth a Resolution of the Commons in that case, of the first Parliament holden under King James: when the Clerk of that house had put the name of Cambridge before Oxford: they taking disdainfully that Hyfteron Proteron commanded the Antiquities of both Universities to be searched, and after search made, gave the place to Oxon. The like controversie happened in the late [long] Parliament, at what time Sir Simon D’Ewes did at a Committee of the house maintain the preheminance of Cambridge. How can this Savilian Professour discharge the place upon such an emergency? Must we at such occasions proceed to a new choice? or must we give up our cause, and betray our priviledges? How can he take an Oath not to reveal the secrets of the University, or be entrusted with the perusall of our Archives, who is obliged to assist Cambridge with advice*
for

for the defence of *their Honour*, whether such aid be demanded of him, or not?

This case is so clear that I need not urge our sense for the reputation of the University, how ignominious it would be not to find one amongst our selves that could discharge the Office as well, or better then a stranger. Having shewed his *inhability* it is not material to shew his *unfitness*. His education and course of studies hath lyen another way: he is not versed in the custome of our Courts, nor in management of suits at Law. It will require a long time for him to gain an *exalt* knowledge of our Records; then to know how far they are valid in common Law at present, which are to be produced, and which not: and unlesse hee be acquainted herewith hee may put the University upon many inconveniences, and ruine what hee ought to uphold. When we choose an Officer, the intent of the Oath abovementioned, is, that we shall nominate a person whom we know, or verily believe to be able and fit to execute the Office vacant. But for ought that I could yet gather from them that favoured the Doctor, they chose a man that's fit to learn how he might discharge the place in contest: For it being objected that Divinity and Mathematicks had been his study, and that since he was to beginne the study of Laws and usages, it was an act of impudence to let him try conclusions and make *Essays* in cases of high concernment: that we had a suit now ready to be commenced against the Town, (as others frequently arise) should that case be let fall, or lie dormant untill our new Antiquary learn his duty perfectly? How is, or will he in any time be, able to advise *duely* and *fittingly* the Chancellour and University upon any emergency? To this all the answer I met with was, that he was a man of great comprehension, and a plodding active person. How any upon such generall qualifications could swear Doctor Wallis was *habilis & idoneus*, fit for such a Trust, I know not: I doubt that the Savilian Electours would not choose me into his Professourship (it being vacant) before the most deserving person in the World, if I should get my self recommended unto them in such terms.

They which dissented from Doctor Wallis in the nomination of Doctor Zouch, made choise of a person out of our own University whose capacity to stand was undoubted, and whose abilities were unquestionable. A man, whom His Highness hath confirmed in his Professourship, and (upon the Tryal of the Portugall Embassadour's brother) made use of his advice? A man skilfull in the Laws, and in our usages having been thirty years Assessor in our Courts; and from whose hands we might well expect to see our Archives and Records modelled and digested accurately, since he had so well gone through that great work of digesting our Statutes, wherein many before had failed. Of all those testimonies of his affection that he hath given at sundry times to this University, I think this last to be the most signall, that he would condescend to accept, what wee strangely refused him. Would any man of no lesse ordinary discretion then parts, have stood his Competitour? can any man acquit the hundred and five Suffragatours? can any one joyn with him that protested in the presence of Almighty God that all things were performed rightly and according to Statute? If the ignorance of what they might and ought to have known, and whereof we had reminded them, does not free them from Perjury, then neither can I. I leave them to repent for what is past, and

to grow wiser for the time to come, least after ages grow more cautious then to *endow* or *entrust* men of so loose dealings. And withall let them think that it is too late to debate Actions passed, and to seek now to salve their consciences by far-fetch'd interpretations, or *dispensation*; If any member of this University do sue for a *dispensation*, (or interpretation of Statute, such as is not allowed) it is *perjury* in him: if it be accepted, it is *perjury* in the Savilian Professour: if admitted of by the University, it is *perjury* on their side; yea, if they do not hinder all such endeavours; since that all are sworn to keep, and to cause them Statutes to be kept by others; and all *Dispensations* are confessed breaches of Statute.

These were the motives which induced ninety and eight persons to disallow of Doctor Wallis, which how convincing they are we may thence judge, that the new Antiquary (a man so qualified for the discharge of that place, that he was preferred before the Reverend and learned Doctor Zouch) hath not been able to weaken them: yet notwithstanding that these reasons were divulged and known, after a suspicious management of an Election, he was pronounced Elect to the place by one hundred and five votes; before which declaration, the Election was protested against solemnly as not statutably ordered, and interpretation of a doubtful or elss condemning passage demanded: but neither that nor any other personal exceptions (such as may in due time be taken into consideration) could prevail upon men already resolved. He was then pronounced Elect, and (whereas being present, he ought immediately to have been admitted) after some space of time hath been admitted to the keeping of our Archives, and hath taken the oath of secrecy to the University.

